

Remarks

At pages 2-3 of the Office Action the Examiner rejects claims 1-6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,769,267 to Duynslager *et al.* Reconsideration and withdrawal of this rejection is respectfully requested.

The Examiner asserts that Duynslager discloses a capsule manufactured by injection molding (which the Examiner asserts discloses an injection-molded container) for delivering a water-destined ingredient (which the Examiner states “disintegrates in a digestive tract, therefore contents are released into a digestive tract, therefore an aqueous environment and destination...”) which comprises a biocide and antibacterial composition (bactericide). The Examiner further asserts that Duynslager discloses that the capsule comprises gelatin and polyvinyl alcohol (“PVOH”) and therefore PVOH and a material other than PVOH that will dissolve at an intended aqueous destination site thus, in the Examiner’s estimation, disintegrates in a digestive tract, as stated above, therefore both gelatin and PVOH disintegrate and therefore dissolve. Regarding claim 4, the Examiner asserts that the capsule of Duynslager is cylindrical and therefore an elongate tubular package and has a closed rounded end as shown in Figure 1 of the reference.

The embodiments of the present invention claimed in the instant application concern injection-molded capsule containers for delivering a water-destined ingredient, and the claims are limited to certain types of water-destined ingredients within the injection-molded capsules. In Claim 1 and the claims dependent therefrom, the water-destined ingredients within the capsules, are those selected from the group consisting of a fabric care composition, a surface care composition and a dishwashing composition and the container comprises material other than PVOH which material will dissolve at an intended aqueous destination site. In Claims 5 and 6, the water-destined ingredients are those selected from the group consisting of fabric care compositions, dishwashing compositions, water-softening compositions, laundry compositions, rinse aid compositions, antibacterial compositions and refill compositions for a trigger-type spray.

A prior art patent anticipates when that patent describes all the elements and limitations of the claim and enables one skilled in the art to make and use the claimed invention. *Merck & Co. v. Teva Pharmaceuticals USA Inc.*, 347 F.3d 1367, 1372, 68 U.S.P.Q. 2d 185 (Fed. Cir. 2003). As discussed below, Duynslager does not describe all the elements of the claims of the instant application and does not enable one skilled in the art to make the specific injection-molded capsules of the present invention. Therefore, the present invention is not anticipated by Duynslager.

Duynslager discloses telescope-type capsule containers for pharmaceuticals and, possibly, fertilizers but not injection-molded capsule containers for the specific water-destined ingredients recited in the limitations of the claims of the instant application. In the Field of the Invention, Duynslager discloses the capsules of this patent with respect to containing pharmaceuticals. (See, Duynslager at column 1, lines 4-7.) In the Background of the Invention section, standard containers for pharmaceuticals or other powders, granular or liquid substances, so-called telescope type containers, are discussed and this section of the specification of this patent makes specific reference to pharmaceuticals, fertilizer and the like. (See, Duynslager at column 1, lines 11-23.) In the Summary of the Invention, Duynslager describes a particular object of the invention as providing a telescope-type capsule with specific reference to pharmaceutical use. (See, Duynslager at column 3, lines 40-46). Two of the drawings of this patent pertain to the invention applied to telescope-type capsules with reference to pharmaceutical use. (See, Duynslager at column 4, lines 1-11). Finally, in discussing the materials used to make the smaller telescope-type capsules of this patent having an outer skin which disintegrates, Duynslager specifically references disintegration in the digestive tract or after the capsules have been introduced into the earth, which is consistent with the specific types of containers discussed within the patent; that is, telescope-type capsules for pharmaceutical use or fertilizers. (See, Duynslager at column 10, lines 6-10.)

Considering the disclosure of Duynslager, and particularly the passages cited above which demonstrate that Duynslager repeatedly makes reference to specific uses of the telescope-type capsules described therein for pharmaceuticals and fertilizer and does not specifically disclose any other materials contained within its capsules, this patent

discloses telescope-type capsules for pharmaceuticals and fertilizers and enables one skilled in the art to make and use the capsules described therein for pharmaceutical uses and fertilizers. Accordingly, Duynslager neither discloses nor enables one skilled in the art to make injection-molded capsules to dissolve at an intended aqueous destination site, to contain materials such as a fabric care composition, a surface care composition, a dishwashing composition, a water-softening composition, a laundry composition, a rinse aid composition, an antibacterial composition and a refill composition for a trigger-type spray. Claim 1 of the instant application, however, requires that the capsule containers of the present invention contain a fabric care composition, a surface care composition or a dishwashing composition, and claim 5 of the instant application requires that the capsule container comprise a fabric care composition, a dishwashing composition, a water-softening composition, a laundry composition, a rinse aid composition, an antibacterial composition and a refill composition for a trigger-type spray. As such, Duynslager does not describe all the elements of the claims of the instant application and does not enable one skilled in the art to make injection-molded capsule containers for delivering the water-destined ingredients specifically recited in the claims of the instant application. Hence, the present invention is not anticipated by Duynslager.

Also, the Examiner asserts that Duynslager, at column 10, line 21, discloses a composition containing a biocide and antibacterial composition. Duynslager in this regard, however, discloses that the capsule may contain bactericides. In the present invention, as set forth in claim 3, the composition (i.e. the fabric care composition, the surface care composition or the dishwashing composition) within the capsule comprises the materials recited in this claim. Accordingly, the present invention, including the embodiment set forth in claim 3, is not anticipated by Duynslager.

The present invention is also not obvious over Duynslager. As discusses above, Duynslager discloses telescope-type capsules for pharmaceuticals and, possibly, fertilizers but not injection-molded capsules for the specific compositions recited in the limitations of the claims of the instant application. Thus, taking Duynslager as a whole, this patent does not teach or suggest injection-molded capsule containers for delivering a water-destined ingredient selected from the group consisting of fabric care compositions,

surface care compositions and dishwashing compositions as recited in claim 1 of the instant application, or such capsules for delivering water-destined ingredients selected from the group consisting of fabric care compositions, dishwashing compositions, water-softening compositions, laundry compositions, rinse aid compositions, antibacterial compositions, and refill compositions for a trigger-type spray as recited in claim 5 of the instant application. Accordingly, Duynslager provides no teaching or suggestion of the injection-molded capsules of the present invention for delivering the water-destined ingredients specifically recited in the claims of the instant application. Therefore, the present invention is not obvious over Duynslager.


Conclusion

The instant application is believed to be in condition for allowance. A Notice of Allowance of Claims 1-6 is respectfully requested. The Examiner is invited to telephone the undersigned at (908) 722-0700 if it is believed that further discussions, and/or additional amendment would help advance the prosecution of the instant application.

If any additional extension of time is required, Applicants request that this be considered a petition therefor. Please charge any required petition fee to the Deposit Account No. 14-1263.

Please charge any insufficiency of fees, or credit any excess, to the Deposit Account No. 14-1263.

Respectfully submitted,


Mark A. Montana
Registration No. 44,948

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NORRIS, McLAUGHLIN & MARCUS
P.O. Box 1018
Somerville, NJ 08876-1018
(908) 722-0700

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